

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNA RILEY, in her capacity as the
Treasurer-Tax Collector of Stanislaus
County,

No. 1:20-cv-01177-DAD-EPG

Plaintiff,

v.

LLOYD G. PLOUTZ, et al.,

Defendants.

ORDER CONCERNING STIPULATION AND
PROPOSED ORDER

On August 20, 2020, Defendant United States of America, Internal Revenue Service removed this action concerning excess proceeds from a tax sale from the Superior Court of California, County of Stanislaus. (ECF No. 1). By the time of removal, Defendant Seeger Industries, Inc., had filed an answer and a cross-complaint. (ECF Nos. 6-13, 6-14).

On September 11, 2020, Defendant City of Modesto (“Modesto”) filed a notice “disclaim[ing] any right, title, and/or interest in or to the property at issue in this action (336 De Vega Court, Modesto, CA 95354), or any proceeds from the sale of such property, including Modesto’s claim in the amount of \$611.64 recited in the Complaint.” (ECF No. 8 at 2). The same day, Modesto and Plaintiff Donna Riley filed a stipulation for dismissal with prejudice, stating that Modesto was dismissed with prejudice pursuant to Rule 41. (ECF No. 9).

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1 Rule 41(a)(1) governs voluntary dismissals. That rule states:

2 (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any
3 applicable federal statute, the plaintiff may dismiss an action without a court order
4 by filing:

5 (i) a notice of dismissal before the opposing party serves either an answer
6 or a motion for summary judgment; or
7 (ii) a stipulation of dismissal signed by all parties who have appeared.

8 (B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is
9 without prejudice. But if the plaintiff previously dismissed any federal- or state-
10 court action based on or including the same claim, a notice of dismissal operates
11 as an adjudication on the merits.

12 Fed. R. Civ. P. 41(a)(1).

13 It is not clear to the Court that this stipulation complies with Rule 41(a)(1). As to Rule
14 41(a)(1)(A)(i) it is not clear whether Modesto's filing at ECF No. 8 is an "answer" for present
15 purposes. And Rule 41(a)(1)(A)(ii) does not apply because the stipulation was not "signed by all
16 parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A)(ii).

17 Accordingly, it is HEREBY ORDERED that within seven (7) days, Plaintiff and Modesto
18 shall file either (1) a stipulation signed by all parties that have appeared in accordance with Rule
19 41(a)(1)(A)(ii) or (2) an explanation for why their stipulation (ECF No. 9) otherwise satisfies
20 Rule 41.

21 IT IS SO ORDERED.

22 Dated: September 15, 2020

23 /s/ *Eric P. Groj*
24 UNITED STATES MAGISTRATE JUDGE